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Diana J. Brundage

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ORIGINAL

TRANSCRIPT OF PROCEEDINGS

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Applications of ) MM DOCKET NO. 94-88  
)  
COMMUNITY EDUCATIONAL ASSOCIATION )  
Holly Hill, Florida )  
)  
CORNERSTONE COMMUNITY RADIO, INC. )  
Flagler Beach, Florida )  
)  
For the Construction Permit for a New )  
Noncommercial Educational FM )  
Station on Channel 212A )

DOCKET FILE COPY ORIGINAL

DATE OF HEARING: December 15, 1994  
PLACE OF HEARING: Washington, D.C.

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FREE STATE REPORTING, INC.  
Court Reporting Depositions  
D.C. Area (301) 261-1902  
Balt. & Annap. (410) 974-0947

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
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MM Docket No. 94-88

COMMUNITY EDUCATIONAL ASSOCIATION )

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CORNERSTONE COMMUNITY RADIO, INC. )

Flagler Beach, Florida )

For the Construction Permit for a New )

Noncommercial Educational FM )

Station on Channel 212A )

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-----)  
 The above-entitled matter came on for hearing  
 pursuant to Notice before Joseph Chachkin, Administrative Law  
 Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom  
 No. 3, on Thursday, December 15, 1994, at 10:00 a.m.

**APPEARANCES:**

On behalf of Community Educational Association:

SCOTT C. CINNAMON, ESQUIRE  
 Brown Nietert & Kauffman, Chartered  
 1920 N Street, NW  
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On behalf of the Chief, Mass Media Bureau:

ROBERT A. ZAUNER, ESQUIRE  
 2025 M Street  
 Washington, D.C. 20554

## I N D E X

E X H I B I T S

	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
CEA Exhibit No. 1	23	23	
CEA Exhibit No. 2	24	24	
CEA Exhibit No. 3	24	25	
CEA Exhibit No. 4	26	26	
CEA Exhibit No. 5	27	27	
CEA Exhibit No. 6	27	61	
CEA Exhibit No. 7	62		67

Hearing Began: 10:00 a.m.      Hearing Ended: 11:30 a.m.

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## P R O C E E D I N G S

1  
2 JUDGE CHACHKIN: This proceeding concerns an  
3 application of Community Educational Association for a  
4 construction permit for a new noncommercial educational FM  
5 station. May I have the appearance on behalf of the parties?  
6 On behalf of the Community Educational Association?

7 MR. CINNAMON: Good morning, Your Honor. Scott C.  
8 Cinnamon of the law firm Brown Nietert & Kauffman.

9 MR. ZAUNER: Robert A. Zauner on behalf of the  
10 Chief, Mass Media Bureau.

11 JUDGE CHACHKIN: Before we get to the hearing, I  
12 have before me a motion of bifurcated hearing. I haven't  
13 received a response by the Bureau. Does the Bureau have any  
14 position on this?

15 MR. ZAUNER: Yes, Your Honor, we have no objection  
16 to it. In effect, as we understand it, what the applicant is  
17 looking for is an opportunity to get information from the FAA  
18 to submit in this proceeding relevant to the hazard issue.

19 JUDGE CHACHKIN: Do you know of any precedent for  
20 granting the bifurcation of the hearing?

21 MR. ZAUNER: Well, I don't know that we really have  
22 to bifurcate the hearing. We could just keep the record open  
23 to receive the information and when it comes in then we -- the  
24 Bureau of course will comments on it.

25 JUDGE CHACHKIN: Well, I propose to deny the motion.

1 I'm not aware of any precedent for such a grant of such a  
2 motion. Seems to me the situation is this. The FAA  
3 apparently has approved a tower at a lower height. Am I not  
4 correct, Mr. Cinnamon?

5 MR. CINNAMON: It has suggested that if we reduced  
6 the height to a certain level we could, we could go forward  
7 with construction.

8 JUDGE CHACHKIN: That's correct, and you've decided  
9 not to. You've decided to persist in operating at a higher  
10 height.

11 MR. CINNAMON: Your Honor, at the lower height we  
12 might have a problem with the city grade issue. We might not  
13 be able to provide coverage over 85 percent of the city.  
14 That's my understanding from my consulting engineer and we're,  
15 we're just awaiting the FAA's determination. They're going  
16 through a rule-making proceeding not unlike an FCC rule-making  
17 proceeding and I am aware of nothing -- no information from  
18 the FAA that would indicate that they will deny this request.

19 JUDGE CHACHKIN: Well, let's assume they do deny it.  
20 Where do we stand then?

21 MR. CINNAMON: Then we would be able to work out a  
22 situation I believe at a height somewhere between the height  
23 suggested on their notice of proposed construction or  
24 alteration and what we proposed and reach a compromise.

25 JUDGE CHACHKIN: Well --

1           MR. ZAUNER: Your Honor, could I have a point of  
2 information? Has Mr. Cinnamon consulted any engineering  
3 experts on the aeronautical question here? Has he obtained  
4 any advice on whether or not the expectation is that this  
5 would not be approved by the FAA?

6           MR. CINNAMON: We -- the same engineer that put  
7 together the FM application is also schooled enough as far as  
8 we are concerned to handle the FAA issue and it is his  
9 understanding working directly with the FAA contact in the  
10 Atlanta office that the only change in aeronautical  
11 patterns -- and I'm sorry if I'm not saying this exactly right  
12 but I am not an aeronautical expert -- the only change that  
13 would take place in terms of use of the airport in question is  
14 that the, the height at which planes would circle and approach  
15 before landing would be raised from 420 to about 440 feet, and  
16 as far as anybody that we've spoken is concerned that's not  
17 relevant because most plans if not -- it's safe to say almost  
18 all planes as they approach are above that height anyway and  
19 the runway primarily affected is one that's no longer in use.  
20 That's what we have been informed so we have no reason to  
21 believe that this won't go forward as proposed. They just  
22 have procedures that need to be followed, and a backlog.

23           JUDGE CHACHKIN: But they have given you no  
24 indication when a ruling would be made?

25           MR. CINNAMON: They're expecting to get a ruling out

1 around Christmas.

2 JUDGE CHACHKIN: Well --

3 MR. ZAUNER: And we're also talking here a  
4 "Singleton" application, Your Honor.

5 JUDGE CHACHKIN: Yeah, but -- propose to leave the  
6 record open forever just because of that. What I propose to  
7 do is go forward with the hearing and if at the time I issue  
8 my initial decision there is no determination by the FAA then  
9 seems I have no other choice but to state that the applicant  
10 has failed its burden on the issue. If -- and according to  
11 what you tell me they're going to reach a decision by, by  
12 Christmas, clearly that there will be sufficient time for them  
13 to act before I issue my initial decision. Obviously, you're  
14 going to have to file a -- well, you'll have to file a motion  
15 I assume for leave to amend when they file -- reach their  
16 decision and then I assume the Bureau will take its position.  
17 But in any event, hopefully there'll be a resolution before I  
18 reach my initial decision. If not, I have no choice but to  
19 say that you failed to meet the burden on the issue.

20 MR. CINNAMON: Very well. So, I will have to file a  
21 motion for leave to accept a post-record submission?

22 JUDGE CHACHKIN: I assume you'll have to. There  
23 will have to be some way to get something in the record.

24 MR. CINNAMON: Is it possible to leave the record  
25 open for the limited purpose of receiving the FAA's

1 determination the study?

2 JUDGE CHACHKIN: No, I don't propose to do that.  
3 There is an issue pending. I don't know what they're going to  
4 finally conclude. They may not conclude favorably to you, I  
5 don't know.

6 MR. CINNAMON: But I guess, Your Honor, my  
7 suggestion is whichever way they conclude we will have to  
8 respond accordingly.

9 JUDGE CHACHKIN: Well --

10 MR. CINNAMON: If they, if they grant the -- if they  
11 make the determination of no hazard then we can go forward.  
12 If they make a determination of hazard and suggest that I  
13 reduce height, then we'll work a way to meet the city grade  
14 issue and reduce the height to the level in question, but I  
15 can't go anywhere until the FAA tells me what to do, I can't  
16 do anything on behalf of my applicant.

17 JUDGE CHACHKIN: I suggest then you file a motion to  
18 reopen the record and I'll wait for comments from the Bureau  
19 and make a ruling thereon.

20 MR. CINNAMON: Very well, Your Honor.

21 JUDGE CHACHKIN: I think we can proceed now to the  
22 evidence on -- you have submitted a direct case on the issue  
23 designated by the Chief, Audio Services Division dealing with  
24 whether or not the CEA is a qualified educational  
25 organization. The Bureau has advised me that they have no

1 witnesses to cross-examine, they have not requested any  
2 witnesses for cross-examination and I observe that there are  
3 no -- you have not brought any principals here to proceed  
4 with.

5 MR. CINNAMON: No, Your Honor, I have not.

6 JUDGE CHACHKIN: Then let's proceed with your  
7 putting your exhibits in evidence.

8 MR. CINNAMON: Very well, Your Honor. Presenting to  
9 the court reporter and asking her to mark as evidence  
10 Community Educational Association Exhibit No. 1. It's a six-  
11 page exhibit and the final page is the declaration of  
12 president of CEA, Jose Mercado sponsoring the entire exhibit.

13 JUDGE CHACHKIN: The document described will be  
14 marked for identification as CEA Exhibit 1.

15 (Whereupon, the document referred to as  
16 CEA Exhibit No. 1 was marked for  
17 identification.)

18 JUDGE CHACHKIN: Any objection to its receipt in  
19 evidence?

20 MR. ZAUNER: No objection.

21 JUDGE CHACHKIN: CEA Exhibit 1 is received.

22 (Whereupon, the document referred to as  
23 CEA Exhibit No. 1 was received into  
24 evidence.)

25 MR. CINNAMON: Your Honor, I am putting before the

1 court reporter CEA's Exhibit No. 2. It is a two-page document  
2 entitled "The Statement of Educational Goal and Purposes of  
3 Community Educational Association." It is also sponsored --  
4 the final page of the exhibit is a declaration of Jose  
5 Mercado, the president of CEA sponsoring the exhibit. I ask  
6 that it be marked as evidence at this time.

7 JUDGE CHACHKIN: The document described is marked  
8 for identification as CEA Exhibit 2.

9 (Whereupon, the document referred to as  
10 CEA Exhibit No. 2 was marked for  
11 identification.)

12 JUDGE CHACHKIN: Any objection to its receipt?

13 MR. ZAUNER: No objection.

14 JUDGE CHACHKIN: CEA Exhibit 2 is received.

15 (Whereupon, the document referred to as  
16 CEA Exhibit No. 2 was received into  
17 evidence.)

18 MR. CINNAMON: Your Honor, I'm putting before the  
19 court reporter CEA's Exhibit No. 3 which is a one page  
20 biographical sketch of Jose Mercado. It is also sponsored by  
21 the declaration of the president of CEA, Jose Mercado. I ask  
22 that it be marked for identification.

23 JUDGE CHACHKIN: The document described will be  
24 marked for identification as CEA Exhibit 3.

25 (Whereupon, the document referred to as

1 CEA Exhibit No. 3 was marked for  
2 identification.)

3 JUDGE CHACHKIN: How is this document relevant to  
4 the issues in this case considering that this is not a  
5 television station? This is a radio station so the Commission  
6 doesn't look at the makeup of the applicant. It's concern is  
7 whether or not it's a educational organization consistent with  
8 the Commission's rules. How is this document relevant?

9 MR. CINNAMON: It was submitted for background  
10 purposes for, for an understanding of who the principals are  
11 and how -- what they plan to contribute to the organization  
12 more as a help to Your Honor because I am trying to meet this  
13 issue as best as I can on behalf of my client.

14 JUDGE CHACHKIN: What's the Bureau's position?

15 MR. ZAUNER: Your Honor, I agree with you that it's  
16 not relevant, but it seems harmless and we wouldn't object as  
17 background information on how they came to apply for the  
18 station.

19 JUDGE CHACHKIN: The only part of this exhibit that  
20 I will allow -- the part -- first sentence. The rest of the  
21 exhibit is not relevant to the issues in this case and is  
22 rejected. So, with the exception of the first sentence the  
23 remainder of the exhibit is rejected as irrelevant.

24 (Whereupon, the document referred to as  
25 CEA Exhibit No. 3, as amended, was

1 received into evidence.)

2 JUDGE CHACHKIN: Go on.

3 MR. CINNAMON: Your Honor, I am putting before the  
4 court reporter CEA's Exhibit No. 4. It's a one-page exhibit,  
5 a biographical sketch of Orlando Mercado sponsored by the  
6 declaration of Orlando Mercado. I imagine in light of Your  
7 Honor's ruling we should only offer the first sentence of that  
8 exhibit into evidence.

9 JUDGE CHACHKIN: Well, that's the only possible  
10 relevance to show who -- what the makeup of it is. Even that  
11 is not relevant but I'll permit that in. As background it's  
12 totally irrelevant. What is the position of the Bureau?

13 MR. ZAUNER: We agree, Your Honor.

14 JUDGE CHACHKIN: First of all, let me -- the CEA  
15 Exhibit 4 is marked for identification.

16 (Whereupon, the document referred to as  
17 CEA Exhibit No. 4 was marked for  
18 identification.)

19 JUDGE CHACHKIN: I will receive in evidence the  
20 first sentence. The remainder of the exhibit will be rejected  
21 as not relevant.

22 (Whereupon, the document referred to as  
23 CEA Exhibit No. 4, as amended, was  
24 received into evidence.)

25 MR. CINNAMON: Your Honor, I am putting before the

1 court reporter CEA's Exhibit No. 5. It's a one-page exhibit  
2 entitled "Biographical Sketch of Clara del Toro." It is  
3 sponsored by the declaration of Ms. del Toro. I ask that it  
4 be marked for identification.

5 JUDGE CHACHKIN: The document described is marked  
6 for identification as CEA Exhibit 5.

7 (Whereupon, the document referred to as  
8 CEA Exhibit No. 5 was marked for  
9 identification.)

10 JUDGE CHACHKIN: And consistent with my prior  
11 ruling, the first sentence will be received and the remainder  
12 of the exhibit will be rejected as not relevant.

13 (Whereupon, the document referred to as  
14 CEA Exhibit No. 5, as amended, was  
15 received into evidence.)

16 MR. CINNAMON: Your Honor, I am now putting before  
17 the court reporter CEA's Exhibit No. 6. It is a 13-page  
18 exhibit sponsored with the declaration of the president of  
19 CEA, Jose Mercado. The exhibit is entitled "Description of  
20 Programs." I ask that it be marked into evidence.

21 JUDGE CHACHKIN: The document described is marked  
22 for identification as CEA Exhibit 6.

23 (Whereupon, the document referred to as  
24 CEA Exhibit No. 6 was marked for  
25 identification.)

1 JUDGE CHACHKIN: Any objection to its receipt?

2 MR. ZAUNER: I would like to know what the purpose  
3 of this is. This information is not required.

4 MR. CINNAMON: Is that addressed to me?

5 JUDGE CHACHKIN: I assume it is.

6 MR. CINNAMON: Based on, based on the order of Your  
7 Honor -- the memorandum, order and opinion -- memorandum,  
8 opinion and order released December 5, 1994, FCC 94M-638,  
9 wherein CEA's motion for summary decision was denied,  
10 paragraph 4 indicates that it was denied in substantial part  
11 because of the lack of a weekly program schedule. So, in an  
12 effort to meet the judge's concern, we created and submitted a  
13 weekly program scheduled based on what we had anticipated  
14 doing when we filed the application.

15 MR. ZAUNER: Your Honor, weekly program schedules  
16 are no longer required. Nor is information on specific  
17 programming. This used to be required. Back in 1983 the old  
18 copy of FCC Form 340 had a section, "Statement of Program  
19 Service of Broadcast Applicant" and that section required for  
20 example among other things that are no longer required,  
21 "Attach as exhibit number blank a proposed weekly schedule of  
22 programs together with a brief description of programs not  
23 recognizable by their titles," on and on. It also asked for  
24 sources of program and to be -- the programs are to be  
25 identified as whether they are local, recorded or network

1 program --

2 JUDGE CHACHKIN: What are you reading from?

3 MR. ZAUNER: -- whether there are other programs.

4 JUDGE CHACHKIN: Excuse me.

5 MR. ZAUNER: This is from Form -- FCC Form 340.

6 JUDGE CHACHKIN: Which is what?

7 MR. ZAUNER: Was in use in about 1983.

8 JUDGE CHACHKIN: As to what?

9 MR. ZAUNER: As to "Application for authority to

10 construct or make changes in a noncommercial, educational

11 broadcast station." These are the requirements that were in

12 effect, past tense. The --

13 JUDGE CHACHKIN: Wait a minute. Are we on the

14 processing line now, counsel?

15 MR. ZAUNER: Yes, we are. We're part of the

16 processing line. Of course we are.

17 JUDGE CHACHKIN: Wait a minute. The -- I believe

18 it's part of the Bureau, Chief, Audio Services Division, they

19 designated this matter for hearing on the grounds that they

20 were not satisfied --

21 MR. ZAUNER: That's right.

22 JUDGE CHACHKIN: -- that the applicant could qualify

23 as a nonprofit educational organization.

24 MR. ZAUNER: That is correct.

25 JUDGE CHACHKIN: And so now the applicant is putting

1 in evidence.

2 MR. ZAUNER: But that is not the evidence that the  
3 Commission is looking for.

4 JUDGE CHACHKIN: Well, let me ask you, what evidence  
5 is the Commission looking for?

6 MR. ZAUNER: Let me get to that. I'm telling  
7 you -- I'm prefacing this with a little background as to what  
8 was in existence and what was required in the past. This kind  
9 of information used to be required. In the new Form 340 --

10 JUDGE CHACHKIN: And what was this now?

11 MR. ZAUNER: I'm looking at FCC Form 340 and it has  
12 the date of January 1983.

13 JUDGE CHACHKIN: And when was The Way of the Cross  
14 decision issued, counsel?

15 MR. ZAUNER: 1985.

16 JUDGE CHACHKIN: So, that was subsequent?

17 MR. ZAUNER: That is correct.

18 JUDGE CHACHKIN: Are you aware of what the  
19 Commission said there?

20 MR. ZAUNER: Yes.

21 MR. CINNAMON: Your Honor --

22 JUDGE CHACHKIN: Didn't the Commission specifically  
23 say there that they weren't able to make a determination  
24 because the applicant had not submitted any program --  
25 programming schedule?

1 MR. CINNAMON: Your Honor, as a matter of  
2 clarification, Way of the Cross was based on a television  
3 station and the Commission made a distinction within the case  
4 saying that television stations are subject to far more  
5 scrutiny than FM.

6 JUDGE CHACHKIN: The only difference between  
7 educational television and radio is the Commission required  
8 information about the composition of the board. Namely, has  
9 to be local and has other requirements. Insofar as the rest  
10 of anything else goes, whether it's a education organization  
11 or not, it's identical to what it is in radio and if you can  
12 show me anything to the contrary I'd like to see it. In Way  
13 of the Cross, notwithstanding the fact that you pointed out  
14 the application doesn't require it and I assume the same would  
15 be true with a television application --

16 MR. ZAUNER: I presume so. I don't have a  
17 television application. I think --

18 JUDGE CHACHKIN: The Commission there  
19 specifically said that they criticized because we lack  
20 information as the quality and kinds of program categories to  
21 be broadcast in the typical week. Since Way has not  
22 introduced -- has not identified any programming falling under  
23 certain definitions and no schedule has been supplied. So  
24 apparently the Commission has perhaps different requirements  
25 than the processing line does.

1 MR. ZAUNER: Well, Your Honor, this 1983 form may  
2 have been in effect at the time The Way of the Cross case was  
3 decided. But I'm going to tell you right now, in 1992 -- the  
4 February 1992 form which I have, only requires "Noncommercial  
5 educational broadcast stations to attach as an exhibit a brief  
6 description in narrative form of the planned programming  
7 service relating to the issues of public concern facing the  
8 proposed service area." That's the only requirement.

9 Applications are routinely granted that meet that requirement.  
10 It was determined on the processing line that the applicant in  
11 this proceeding did not meet that requirement, that the  
12 statement was not sufficient. That's why the issue was added.

13 JUDGE CHACHKIN: Well, the statement was not  
14 sufficient in what sense? What was lacking in the statement?

15 MR. ZAUNER: I don't know what was lacking in their  
16 original statement. Whoever --

17 JUDGE CHACHKIN: Well --

18 MR. ZAUNER: But I can tell you this: the important  
19 thing is not what was lacking then. The important thing is  
20 that the applicant had now provided a statement which is  
21 sufficient to meet the processing line's standards in  
22 evaluating this --

23 JUDGE CHACHKIN: What statement --

24 MR. ZAUNER: -- compliance.

25 JUDGE CHACHKIN: -- has been submitted which is now

1 sufficient? What are you referring to?

2 MR. ZAUNER: I'm referring specifically to the  
3 motion for summary decision. The Chief, Audio Services  
4 Division people have looked at that statement and they have  
5 said that that is now sufficient.

6 JUDGE CHACHKIN: What is sufficient? The motion for  
7 summary decision --

8 MR. ZAUNER: The narrative statement --

9 JUDGE CHACHKIN: -- was based on --

10 MR. ZAUNER: -- that was added was --

11 MR. CINNAMON: Your Honor --

12 JUDGE CHACHKIN: -- the applicant and the  
13 amendments. Now, what language in the amendment according to  
14 what you're telling me was not sufficient?

15 MR. ZAUNER: Well, let me -- we have the --

16 JUDGE CHACHKIN: I don't want to hear a general -- I  
17 mean, that's what I found when I got your -- when I got the  
18 Bureau's comments. This is nonengineering, this is  
19 nonengineering and I expected the Bureau was going to support  
20 a motion for summary decision. I expect they'll tell me why  
21 and give me reasons, they'll not just make a statement, "We  
22 have reviewed it and we're satisfied."

23 MR. ZAUNER: I'll give you reasons right now, Your  
24 Honor.

25 JUDGE CHACHKIN: Fine. Give me reasons. Why is --

1 MR. ZAUNER: Here's the statement that's sufficient:

2 "Heath care. CEA will hold -- "

3 JUDGE CHACHKIN: What are you referring to now?

4 MR. ZAUNER: I'm referring to Exhibit 2, page 1.

5 The information that's supplied --

6 JUDGE CHACHKIN: Exhibit 2, page 1 of what?

7 MR. ZAUNER: CEA, we've got it in front of us. This  
8 is the exhibit.

9 JUDGE CHACHKIN: You're referring to the Exhibit 1?

10 MR. ZAUNER: It's what's in --

11 JUDGE CHACHKIN: Wait a minute. I want to get it.  
12 Exhibit 1, page 2?

13 MR. ZAUNER: That's right.

14 JUDGE CHACHKIN: Exhibit 1, page 2 is -- all that  
15 consists of is the agreement --

16 MR. CINNAMON: It would be Exhibit, it would be  
17 Exhibit 2, Your Honor.

18 MR. ZAUNER: Exhibit 2, "Statement of Educational  
19 Goal and Purposes of Community Educational Association." Read  
20 the exhibit. Those are the statements. That's the  
21 information that is sufficient. They have set forth their  
22 mission and they have shown illustrative programming that will  
23 meet the mission. That's all they need to do. There's no  
24 need to list specific programs. All they've got to do is give  
25 an indication of how they will program the station to meet

1 | their mission and do what they've done.

2 |           JUDGE CHACHKIN: Are you aware as discussed in the  
3 | 1991 case in Palm Bay Public Radio that the Commission -- that  
4 | processing standards were set up to analyze applicants for  
5 | education -- FM channels? And are you aware that according to  
6 | that processing statement, and I read from it, emphasis is  
7 | placed on instructional programs? "Instructional programs  
8 | according to the processing statement includes all programs  
9 | designed to be utilized by any level of educational  
10 | institution into regular instructional program of the  
11 | institution. In-school, in-service for teachers and college  
12 | credit courses are examples of instructional programs. Under  
13 | general educational is an educational program for which on  
14 | formal credit is given." Now, you tell me on the basis of the  
15 | Exhibit 2 how -- tell me which of these programs according to  
16 | the processing line fit the definition of instructional.

17 |           MR. ZAUNER: Your Honor, the language that you've  
18 | quoted, especially the language, "Emphasis is given to those  
19 | programs that are instructional and general educational," that  
20 | language is now -- should not be read to indicate a need to  
21 | specify specific programming, that is by time, by title, by  
22 | content. What it is -- what it means and what it is intended  
23 | is that the applicant should provide an illustrative showing  
24 | of the programming that they're going to produce.

25 |           JUDGE CHACHKIN: Fine. Now, you tell me --

1 MR. ZAUNER: And they do it -- and they can do it in  
2 general terms in narrative fashion. Let me continue. Let me  
3 continue.

4 JUDGE CHACHKIN: Before you -- let me ask you one  
5 simple question. Do you disagree with me that emphasis is  
6 placed on instructional and general educational programming in  
7 determining whether or not an educational organization  
8 satisfies the requirement?

9 MR. ZAUNER: Yes, and I think --

10 JUDGE CHACHKIN: Do you agree with --

11 MR. ZAUNER: -- you can read this and you can make a  
12 determination that this is educational and instructional --

13 JUDGE CHACHKIN: Then I'd ask you a simple question:  
14 you tell me on the basis of this material which of these  
15 programs -- proposed programs qualifies as instructional  
16 programming under the processing standard. That's all I've  
17 asked, a simple question.

18 MR. ZAUNER: It does. The health-care programs  
19 qualify, the educational --

20 JUDGE CHACHKIN: As I read the definition of --

21 MR. ZAUNER: -- the educational --

22 JUDGE CHACHKIN: -- instructional? As I read the  
23 definition, that's the Commission's definition of  
24 instructional.

25 MR. ZAUNER: Okay. Read your definition again.

1 JUDGE CHACHKIN: "Programs designed to be utilized  
2 by any level of educational institution in the regular  
3 instructional programming of the institution. In-school,  
4 in-service for teachers and college credit course are examples  
5 of instructional programs." In other words, it has to be a  
6 for credit course and it has to be a for credit course for an  
7 educational institution who you've made arrangements with in  
8 order to qualify as instructional.

9 MR. ZAUNER: And what about general education? Do  
10 you have a definition for that?

11 JUDGE CHACHKIN: I'm asking you -- I'm first asking  
12 you about you tell me which of these programs according to the  
13 processing staff using the guidelines established by the  
14 Commission constitutes instructional programs.

15 MR. ZAUNER: I don't believe any of these constitute  
16 instructional, but --

17 MR. CINNAMON: If I might --

18 MR. ZAUNER: But Mr. Cinnamon may be better --

19 MR. CINNAMON: I'll give you hand with this one.

20 Exhibit 2, page 2 under educational, the second sentence, "CEA  
21 also plans to develop a radio school which using written  
22 material developed with the aid of local educators will offer  
23 courses in basic skills such as math, English, reading skills,  
24 health and hygiene."

25 JUDGE CHACHKIN: That's not instructional programs.

1 You have to be -- do it on a basis -- that's for credit  
2 courses on the -- in collaboration with an educational  
3 institution. That's what the Commission says is instructional  
4 programs.

5 MR. ZAUNER: Well, that's what they're proposing to  
6 do, apparently. Is that correct, Mr. Cinnamon?

7 MR. CINNAMON: Well, radio, radio school --

8 MR. ZAUNER: This is a station that's not on the  
9 air. We don't require them to come in with a contract -- a  
10 proposal.

11 JUDGE CHACHKIN: These are not -- they're not  
12 proposing here. They're not proposing here to provide any  
13 credit -- course credit programs.

14 MR. ZAUNER: They are, they are going to provide  
15 general educational programming.

16 JUDGE CHACHKIN: We're talking about --

17 MR. ZAUNER: Okay, but that's one part of it.

18 JUDGE CHACHKIN: We'll get to general educational.  
19 I'm asking you first of all --

20 MR. CINNAMON: Let's assume we are not.

21 MR. ZAUNER: Okay. Let's assume they're not.

22 JUDGE CHACHKIN: All right. So, we assume -- okay,  
23 now you tell me --

24 MR. ZAUNER: Although, for purposes of this  
25 argument.

1 JUDGE CHACHKIN: Well, the processing line reviewed  
2 this thing, they did an analysis, right?

3 MR. ZAUNER: And they --

4 JUDGE CHACHKIN: And they made the analysis  
5 presumably based on what the Commission put out as a  
6 processing standard. So, tell me on the basis of analysis  
7 which of these programs qualifies as instructional  
8 programming.

9 MR. CINNAMON: Your Honor, if I might just for a  
10 second, I don't understand. When the hearing designation  
11 order came out I'll concede that the Bureau added an issue.  
12 Chief -- added an issue which said you have not met this issue  
13 in your application. Subsequent to the issuance of that  
14 hearing designation order, the applicant not only worked  
15 towards resolving the mutual exclusivity between itself and  
16 the other application, but also worked with the Audio Services  
17 Branch and the Hearing Branch to put forth exhibits on -- I'm  
18 sorry, amendments that we felt had the input of the FM Branch  
19 and the Audio Services Division and the Hearing Branch would  
20 satisfy that issue and it was only after we had informally  
21 worked with those two parts of the FCC that we put forth our  
22 motion for summary judgment knowing that we would have the  
23 support because of -- because we were on the same team, we  
24 wanted to see an exhibit that would meet the Commission's  
25 guidelines. Then the Audio Services Division, the same people